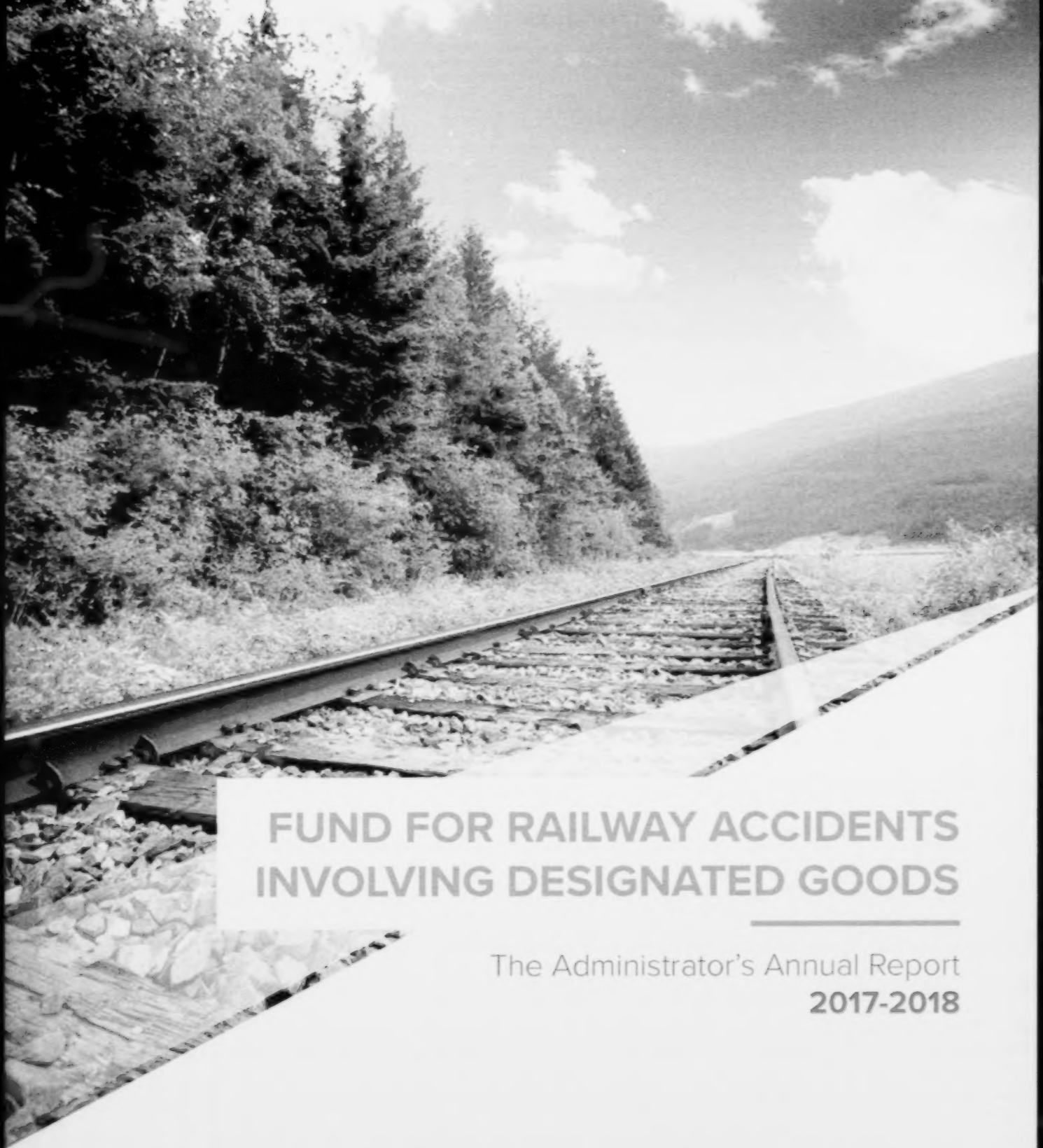

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

The Administrator's Annual Report
2017-2018

Canada

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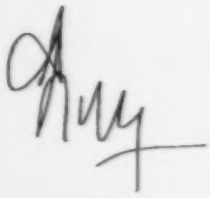
The Honourable Marc Garneau, P.C., M.P.
Minister of Transport
Ottawa, Ontario
K1A 0N5

Dear Minister:

Pursuant to Section 155.93 of the *Canada Transportation Act*, I have the honour of presenting to you the Annual Report for the Fund for Railway Accidents Involving Designated Goods to be laid before each House of Parliament.

The report covers the fiscal year ending March 31, 2018.

Yours sincerely,



Anne Legars, LL.M., CAE
Administrator of the
Fund for Railway Accidents Involving Designated Goods

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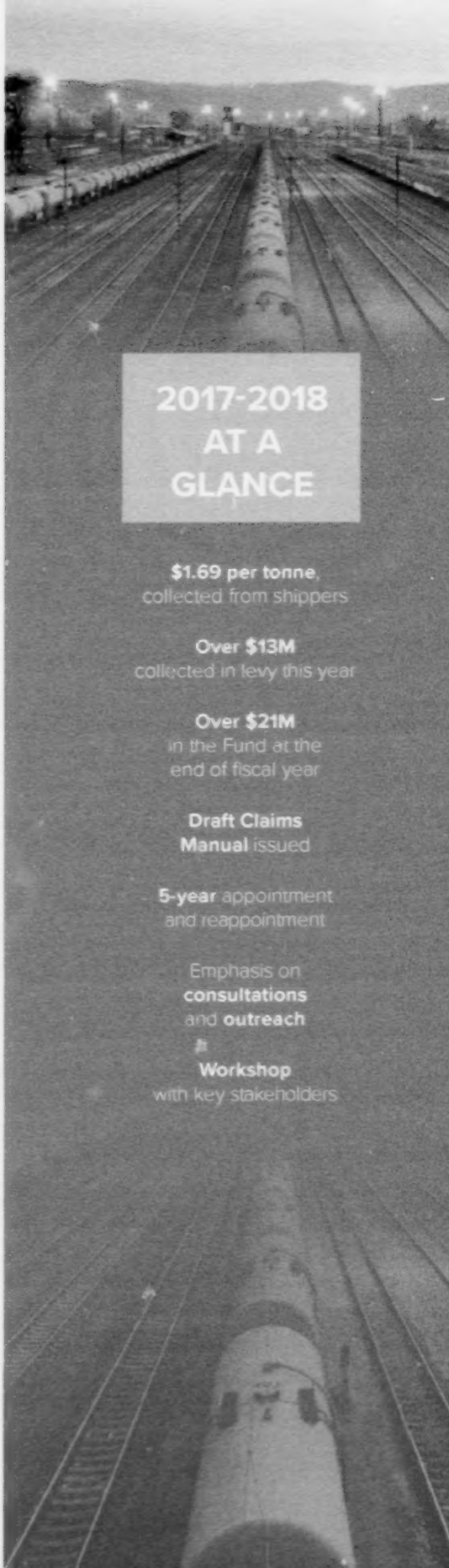
INTRODUCTION

The Fund for Railway Accidents Involving Designated Goods ("Fund" or "Rail Fund") is a specified purpose account in the accounts of Canada, established under section 153.4 of the *Canada Transportation Act*. It provides compensation to the victims of rail accidents for damages caused by crude oil when such damages exceed the railway's limit of liability and insurance. The Fund is financed through a levy paid by crude oil shippers. This levy is collected by the federally regulated railway companies that carry the crude oil. The compensation regime is based on the fundamental principle that railways of federal jurisdiction are strictly liable for damages caused by crude oil carried with or on their assets, up to the amount of the minimum liability insurance coverage that the company is required to maintain.

The Rail Fund is therefore a fund of last resort, which should come into play in large accidents only, as a second tier of indemnification funded by crude oil shippers. There is no limit on claims to the Fund. Should the amount available with the Fund be insufficient to pay all the claims, the Consolidated Revenue Fund would act as a backstop and would be reimbursed over time, with interest, through levies.

This is the second annual report on the operations of the Fund, and it covers the fiscal year ending March 31, 2018.



2017-2018 AT A GLANCE

$1.69 per tonne, collected from shippers

Over $13M collected in levy this year

Over $21M in the Fund at the end of fiscal year

Draft Claims Manual issued

5-year appointment and reappointment

Emphasis on **consultations** and **outreach**

Workshop with key stakeholders

ACTIVITY REPORT

THE FUND'S FISCAL YEAR 2017-2018 WAS MARKED BY THE FOLLOWING EVENTS:

- **Levy indexation.** On April 1, 2017, the levy was adjusted from $1.67 to $1.69 per tonne for the 2017-2018 fiscal year, a 1.01% increase.
- **Appointments.** On May 9, 2017, the original nine-month interim appointment of the Administrator was extended for an additional eight-month term, and the Government advertised in August and September 2017 the opening of Administrator and Deputy Administrator positions under the new Governor-in-Council appointment process. Nevertheless, the Administrator continued to fulfill her duties after her appointment expired on January 10, 2018, until she was reappointed on March 26, 2018 for a five-year mandate. No Deputy Administrator had yet been appointed on March 31, 2018.
- **Engagement with key stakeholders and development of a work plan to ensure the Fund's readiness.** The Administrator launched consultations with key stakeholders during the summer of 2017. These consultations included the circulation of an initial discussion paper and of the draft claims manual, the organization of a number of events, and a workshop held in Ottawa on November 30, 2017. The Administrator developed a work plan based on the outcomes of these consultations as well as on the ongoing engagement with key stakeholders. This work plan aims at ensuring the readiness of the Fund to handle claims in an efficient and orderly manner, should a large railway accident involving crude oil happen.

EVENTS & ACTIVITIES
Levy Indexation
Appointments
Engagement with stakeholders & development of a work plan
Recruitment of additional resources
New obligations with information management

- **Recruitment of additional resources to fulfill the Fund's mandate.** The Administrator recruited a lawyer and a communications and stakeholder engagement officer in order to support her on a daily basis in the development of the indemnification process and in the engagement with key stakeholders.
- **New obligations with respect to information management.** On February 12, 2018, the Fund became subject to the *Access to Information Act* and to the *Privacy Act*, and on March 22, 2018, Library and Archives Canada issued a new Disposition Authorization governing the retention of the documents held by the Fund.

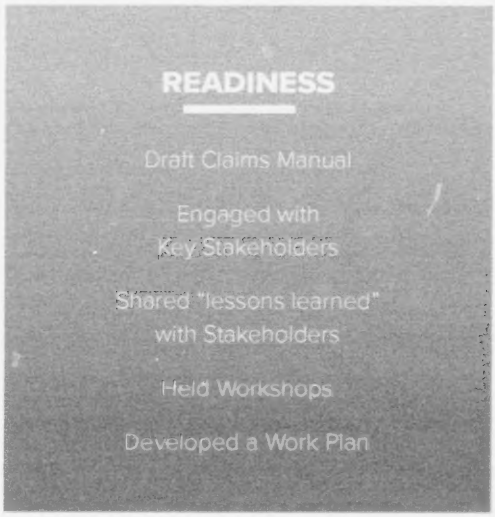
The *Act* provides that the Administrator is responsible for:

- Establishing and paying out claims (sections 154.6 and 155 of the *Act*);
- Ensuring records and systems are properly maintained (section 155.92 of the *Act*);
- Submitting an annual report to the Minister of Transport for tabling in Parliament (section 155.93 of the *Act*).

The present report of the Administrator is therefore structured along these core elements of her statutory mandate.

READINESS FOR THE ASSESSMENT AND PAYMENT OF CLAIMS

There has been no railway accident involving crude oil in the current fiscal year that could have triggered the involvement of the Fund. However, the Administrator must ensure that the Fund is ready to deal with claims, should an accident of sufficient significance arise. In addition to the volume and various types of claims that were indemnified after the Lac-Mégantic tragedy, the Fund also has to assess and indemnify new types of claims that are now provided in the *Act* (such as pure environmental loss or aboriginal loss of hunting, fishing or gathering opportunities). To this end, the Administrator has:



- **Developed a draft claims manual**, building on the Lac-Mégantic claims management experience and on the input from key stakeholders. This claims manual is not a static document, as it is aimed to be improved further as a draft, based on the ongoing comments and recommendations from key stakeholders. This draft is essentially a template that will need to be tailored if and when an accident triggering the Fund's jurisdiction happens, so as to take into account the relevant legal specificities of the province of occurrence and the type of damages at stake. The various iterations of this draft claims manual have been circulated to key stakeholders for comments, and the latest draft is available on demand, in both languages. This document will eventually be posted on the Fund's website during the 2018-2019 fiscal year.
- **Started to engage with the Fund's key stakeholders.** In July 2017, the Administrator sent an initial outreach letter to the key stakeholders of the Fund: railways and their insurers and insurance brokers, provinces, municipalities, responders, private insurance industry and transportation lawyers associations, etc., in order to initiate the consultation and engagement process. This initial outreach letter was followed by an initial discussion document, the circulation of the draft claims manual, the delivery of a series of webinars, the organization of a workshop in Ottawa (as reported below), a number of follow-up documents, and a schedule of engagement meetings with key stakeholders.

The Administrator also reached out to indigenous groups, seeking their engagement in the development of the claims management process. This initial outreach was insufficient to generate indigenous groups' engagement during the fiscal year. Additional outreach and engagement efforts will be deployed to ensure that the claims management process is relevant to indigenous claimants – as individuals or communities – for the compensation of all types of damages provided under the *Act*, including claims for loss of fishing, hunting and gathering opportunities.

- **Shared with key stakeholders the "lessons learned" in mass indemnification**, through the delivery of a series of webinars.

  A first webinar was delivered by Group Richter, the Controller appointed by the Court after the Lac-Mégantic tragedy to indemnify the claimants out of the funds made available under the Companies'

Creditors Arrangement Act. Group Richter was retained by the Administrator to draft the Fund's Claims Manual and the first webinar commented on the lessons learned from the Lac-Mégantic indemnification experience that were incorporated into this draft manual.

- A second webinar was delivered by the head of the Claims Department of the International Oil Pollution Compensation Funds (IOPC Funds). These Funds (to which Canada is party) are based on international marine liability conventions that include the same features as the ones incorporated in the *Canada Transportation Act* liability regime: no-fault liability of the carrier up to its limit of liability, mandatory insurance up to this limit, excess liability covered by a Fund funded by cargo interests (i.e. the oil industry). The Secretariat of the IOPC Funds has several decades of experience in the management of mass indemnification in case of tanker spills – sometimes involving dozens of thousands of claimants. The lessons learned and best practices developed by the international funds will be useful tools for the Rail Fund and its key stakeholders.
- A third webinar on best practices and lessons learned in mass indemnification following natural disasters in Canada – such as flooding or Alberta wildfires – was delivered jointly by the Canadian Red Cross Society and the Insurance Bureau of Canada.

Lessons learned from these massive claims management experiences all point towards the critical importance of coordination, collaboration and pre-planning between the key players (and especially the key payers). They also underline the need for key players to develop their relationship, based on trust and collaboration, before an accident happens.

- **Held a workshop in Ottawa with key stakeholders** on November 30, 2017. The goal of this workshop was to take stock of where the Fund was in terms of claims management preparedness some 18 months after its enactment and set the stage for working towards increased claims management preparedness for the new Administrator and Deputy Administrator appointees. The workshop included a breakout session on incident scenarios. The workshop summary is posted on the Fund's website.
- **Developed a work plan towards readiness in the management and assessment of claims.** This plan includes:
  - The development of communication protocols in case of spills, with the railways carrying crude oil.
  - The retainer, on a stand-by basis, of resources specialized in claims assessment for the different types of damages that can be compensated under the regime, so that the Fund can ramp up its capacity to manage huge volumes of claims, if and when needed.
  - The consolidation of the key stakeholders' network and of the key payers' network.
  - The development of a Key Payers' Network Readiness Plan, with a number of best practices and tools.
  - The writing down and circulation of the claims management policies and assessment guidelines, for comments.
  - Work with the other federal entities who would likely be involved in case of an accident, such as the Canadian Transportation Agency (who would be involved in the assessment of damages caused by fire) or the administration of the Federal Courts (who would be involved in the review of the Administrator's assessment decisions).

- Discussions with federal and provincial entities who also have the mandate to assess pure environmental losses/non-use environmental value or aboriginal claims for loss of fishing, hunting or gathering opportunities.
- Additional research and consultation on these new fields of law.
- Periodic workshops, including workshops dedicated to table top indemnification scenarios.

ASSURANCE THAT RECORDS AND SYSTEMS ARE PROPERLY MAINTAINED

To this end, the Administrator has taken the following measures:

- **Validation of the revenue side.** The Administrator has requested a meeting with the representatives of a rail company that is a new, albeit very marginal, contributor to the Fund. Similar, separate, meetings were held with the other contributors shortly after the enactment of the Fund, with the attendance of the Fund's Auditor and of Transport Canada's financial services, in order to understand how to audit and validate the revenue side of the Fund. At the end of the fiscal year the requested meeting with this new contributor had not yet taken place.
- **Fine-tuning of the allocation of expenses between the Rail Fund and the Ship Fund as per the Rail Fund-Ship Fund MOU.** As the Fund is being hosted in the premises rented by the Ship-source Oil Pollution Fund (Ship Fund) and operated in part by staff hired by the Ship Fund, the two funds signed in March 2017 a MOU which itemizes the resources shared and the financial conditions under which they are shared. Under this MOU, the Ship Fund bills the Rail Fund at the end of the fiscal year for the use of its staff, premises and other shared resources. One of the key elements of the calculation is the proportion of staff time spent on each fund over the relevant fiscal year. In order to be able to establish this proportion, the Administrator of the Ship Fund has implemented time sheets for staff to report the time spent on the Rail Fund. This fiscal year was the second year of operation of the MOU. With the increased activity of the Rail Fund, its share of the common resources used, which are paid back to the Ship Fund at the end of the fiscal year, increased. The MOU has therefore been amended for the upcoming fiscal year, so that 1/12th of the past year's invoice be paid on a provisional basis by the Rail Fund to the Ship Fund at the end of each month, with the actual amount being adjusted at the end of the fiscal year. Interests accrue on the balance of each Fund at the end of each month, and waiting for the end of the fiscal year to bill for the shared services distorts interest calculations for both Funds.

RECORDS & SYSTEMS

Validation of Revenue

Fine-tuning of the Allocation of Expenses

Obtaining Interests Accrued

Complying with Information Management Requirements

- **Obtaining the interests accrued on the balance of the Fund.** Section 153.5 of the *Act* provides that the Minister of Finance shall cause to be credited to the Fund interest calculated in the manner and at the rate determined by the Governor in Council, on the balance of the Fund. As reported in the last annual report, due to coordination delays between the departments of Transport and Finance, the required Order in Council had not been adopted and the interests had therefore not been credited to the Fund at the end of the 2016-2017 fiscal year. As a consequence, the Administrator followed-up via Transport Canada throughout the 2017-2018 fiscal year, so that accrued interests could be accounted for – retroactively – for the first two years of operation of the Fund.
- **Complying with the new information management requirements.** As mentioned above, new information management requirements came into force in February 2018 (*Access to Information Act*, *Privacy Act*) and March 2018 (Disposition Authorization). As these new requirements were anticipated, compliance systems were already in place and the Fund will file its first *Access to Information Act* and *Privacy Act* annual reports before June 30, 2018.

ANNUAL REPORT TO THE MINISTER OF TRANSPORT FOR TABLING IN PARLIAMENT, AND OUTREACH

The *Act* provides that the Administrator's annual report shall present each year the Administrator's activities in that year to the Minister, and that it reports on the financial matters itemized under paragraph 155.93(2) of the *Act*. This financial reporting is done under part 2 of this annual report.

In addition to the Administrator's activities in 2017-2018 that have been already reported above, the Administrator's Office has also carried out a number of outreach activities – sometimes jointly for both the Raii Fund and the Ship Fund – most of them leading to further stakeholder engagement (see boxes).

FRAIDG OUTREACH ACTIVITIES 2017-2018

October – Montreal – Meeting with the Canadian National Railway Company

November – Ottawa – Meeting with the Canadian Pacific Railway Company

December – Montreal – Initial meeting with the Canadian Red Cross Society

January – Initial teleconference meeting with Ministry of Environment & Climate Change Canada

January – Montreal – Follow-up meeting with the Canadian National Railway Company

January – Ottawa – Initial meeting with the Federation of Canadian Municipalities

January – Ottawa – Initial meeting with the Railway Association of Canada

January – Initial teleconference meeting with National Energy Board

February – Gatineau – Initial meeting with the Canadian Transportation Agency

March – Vancouver – Attendance at the Multi-Industry Preparedness and Response Symposium in British Columbia

FRAIDG & SOPF JOINT OUTREACH ACTIVITIES 2017-2018

May – Montreal – Presentation at CILTNA, Chartered Institute of Logistics and Transport

May – Long Beach – Attendance at the International Oil Spill Conference

June – Ottawa – Initial meeting with Eastern Canada Response Corporation

September – Vancouver – Information booth at the annual conference of the Association of Canadian Port Authorities

September – Vancouver – Initial meeting with the Union of BC Municipalities

September – Vancouver – Initial meeting with the Western Canada Marine Response Corporation

February – Initial teleconference meeting with the Canadian Association of Municipal Administrators

March – Victoria – Presentation to the Province of British Columbia Ministry of Environment & Climate Change Strategy

March – Vancouver – Follow-up meeting with the Union of BC Municipalities

Beyond the publication and dissemination of the annual report and the launch of a website, beyond outreach activities themselves, the **Administrator considers stakeholder engagement in the development of the claims management process as the best way to ensure that this process will be efficient and that the Fund will be relevant**, i.e. that it will be able to meet its access to justice purpose.

FINANCIAL REPORT

During the fiscal year, the Fund collected $13,301,632 in levies. Accrued interest on the balance of the Fund (described in section 153.5 of the *Act*) had not yet been calculated, nor credited to the Fund as of March 31, 2018, as the required Order in Council had not been passed at that time. This Order was eventually passed on April 20, and the interests will be adjusted retroactively to the first two years of operation of the Fund.

The Fund's expenses rose to $372,851 during the fiscal year (vs. $72,071 the previous year) including fees paid to the Administrator of $31,900 (vs. $11,550). These expenses are linked to the outsourcing of the development of the draft claims manual, consulting services to support the consultation process, the hiring of additional in-house resources, an increased use of the resources shared by the two Funds ($117,043 vs. $32,531), increased travel and communication expenses, translation costs, and the costs of hosting the one-day workshop in Ottawa on November 30.

At the end of the fiscal year, the Fund had an accumulated surplus of $21,410,182 (vs. $8,283,561 on March 31, 2017).

The Auditor's Report is included in the attached Financial Statements. The Fund has not yet been billed for the preparation of the report, but the cost should be less than $9,000 (plus taxes), according to the Service Agreement concluded in early 2018.

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

FINANCIAL STATEMENTS

MARCH 31, 2018

FUND FOR RAILWAY ACCIDENTS
INVOLVING DESIGNATED GOODS

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INDEPENDENT AUDITOR'S REPORT

To the Administrator of
The Fund for Railway Accidents involving Designated Goods

We have audited the accompanying financial statements of the Fund for Railway Accidents involving Designated Goods, which comprise the statement of financial position as at March 31, 2018, the statements of operations, change in net financial assets and cash flows for the year then ended, as well as a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Public Sector Accounting Standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of the Fund for Railway Accidents involving Designated Goods as at March 31, 2018, as well as the results of its operations, its change in net financial assets and its cash flows for the year then ended in accordance with Public Sector Accounting Standards.

Budget

As explained in Note 7 to the financial statements, budget figures are not disclosed in the financial statements, although it is required according to Public Sector Accounting Standards.

Marcil Lavallée

Chartered Professional Accountants, Licensed Public Accountants

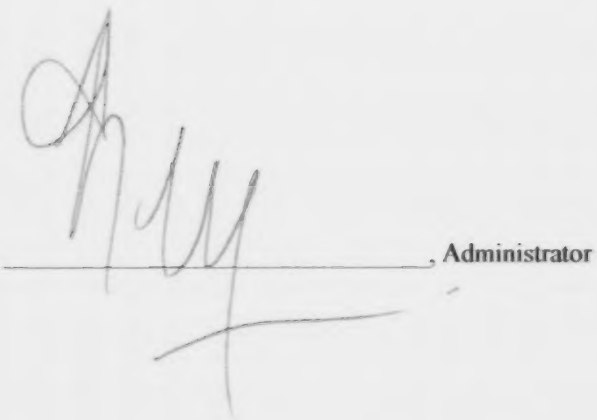
Ottawa, Ontario
May 24, 2018

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF FINANCIAL POSITION

MARCH 31, 2018

	2018	2017
FINANCIAL ASSETS		
Balance of the account with Receiver General for Canada (Note 3)	$ 17,853,431	$ 4,953,529
Accounts receivable	3,377,468	3,370,300
Accrued interest receivable	197,840	-
TOTAL FINANCIAL ASSETS	21,428,739	8,323,829
LIABILITIES		
Accounts payable and accrued liabilities	18,557	7,737
Due to the Ship-source Oil Pollution Fund	-	32,531
TOTAL LIABILITIES	18,557	40,268
NET FINANCIAL ASSETS	21,410,182	8,283,561
ACCUMULATED SURPLUS	$ 21,410,182	$ 8,283,561



_____, Administrator

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF OPERATIONS

FOR THE INITIAL YEAR ENDED MARCH 31, 2018

	2018	2017
REVENUE		
Levy	**$ 13,301,632**	$ 8,355,632
Interest	**197,840**	-
	13,499,472	8,355,632
OPERATING EXPENSES		
Consulting fees	**169,413**	21,751
Administrative services, salaries and office expenses	**131,346**	26,842
Administrator's fees	**31,900**	11,550
Rent	**26,223**	11,838
Audit Fees	**9,040**	-
Travel	**4,929**	90
	372,851	72,071
EXCESS OF REVENUE OVER EXPENSES	**13,126,621**	8,283,561
ACCUMULATED SURPLUS, BEGINNING OF YEAR	**8,283,561**	-
ACCUMULATED SURPLUS, END OF YEAR	**$ 21,410,182**	$ 8,283,561

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF CHANGE IN NET FINANCIAL ASSETS

FOR THE INITIAL YEAR ENDED MARCH 31, 2018

	2018	2017
EXCESS OF REVENUE OVER EXPENSES	**$ 13,126,621**	$ 8,283,561
NET FINANCIAL ASSETS, BEGINNING OF YEAR	**8,283,561**	-
NET FINANCIAL ASSETS, END OF YEAR	**$ 21,410,182**	$ 8,283,561

FUND FOR RAILWAY ACCIDENTS INVOLVING DESIGNATED GOODS

STATEMENT OF CASH FLOWS

FOR THE INITIAL YEAR ENDED MARCH 31, 2018

	2018	2017
OPERATING ACTIVITIES		
Excess of revenue over expenses	**$ 13,126,621**	$ 8,283,561
Net change in non-cash working capital items:		
Accounts receivable	**(7,168)**	(3,370,300)
Accrued interest receivable	**(197,840)**	-
Accounts payable and accrued liabilities	**10,820**	7,737
Due to the Ship-source Oil Pollution Fund	**(32,531)**	32,531
INCREASE IN THE BALANCE OF ACCOUNT WITH RECEIVER GENERAL FOR CANADA	**12,899,902**	4,953,529
BALANCE, BEGINNING OF YEAR	**4,953,529**	-
BALANCE, END OF YEAR	**$ 17,853,431**	$ 4,953,529

1. GOVERNING STATUTES AND PURPOSE OF THE ORGANIZATION

The Fund for Railway Accidents involving Designated Goods (the Fund) was created on June 18, 2016 under the *Safe and Accountable Rail Act* (the Act). The Act amends the *Canada Transportation Act*.

2. SIGNIFICANT ACCOUNTING POLICIES

Basis of accounting

The financial statements are prepared in accordance with Treasury Board accounting policies which are consistent with Public Sector Accounting Standards.

Accounting estimates

The preparation of financial statements in accordance with Treasury Board Secretariat accounting policies, which are consistent with Public Sector Accounting Standards requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the reported amounts of revenue and expenses for the periods covered. The primary estimate relate to the valuation of provision for claims under review when such claims are received. Actual amounts could differ from the estimates.

Revenue recognition

The levy income is recognized when earned.

3. BALANCE OF THE ACCOUNT WITH RECEIVER GENERAL FOR CANADA

The cash balance of the Fund is held within the Consolidated Specified Purpose Accounts of the Government of Canada. Public Works and Government Services Canada acts as the custodian of this cash balance and Transport Canada records the various transactions on behalf of the Fund. The agreement between Transport Canada and the Department of Finance concerning the interest credited to the balance of the account was signed on April 20, 2018. Interest will be credited to the account in accordance with the provisions of the agreement at a rate based on a 5-year Government of Canada bond interest rate. Interest will be paid retroactively to June 18, 2016, the date the Fund was created.

4. FINANCIAL INSTRUMENT

Credit risk

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. The Fund's main credit risks relate to its accounts receivable.

The Fund continuously reviews the financial situation of its clients and establishes allowances for doubtful accounts while keeping in mind the specific credit risk of clients, their historic tendencies and economic situation. The totality of the accounts receivable is to be received from two railway companies. The Fund considers that no risk arises from that situation.

5. RELATED PARTY TRANSACTIONS

The Fund is related, as a component of the accounting framework of the Government of Canada, to all Government of Canada departments, agencies and Crown Corporations.

During the year, the Fund paid to the Ship-Source Oil Pollution Fund an amount of $117,043 (2017: $32,531) for its share of the following operating expenses:

	2018	2017
Rent	$ 26,223	$ 11,838
Administrative services, salaries and office expenses	88,585	20,693
Consulting fees	2,235	-
	$ 117,043	$ 32,531

6. CONTINGENCIES

In the normal course of its operations, the Fund may receive information about incidents that have occurred but for which no claims have been received. It is not possible for the Fund to determine the likeliness of a claim for any of these reported incidents, if any. The Fund is also not able to assess the financial value of any such claims should they materialize. No provision related to such incidents is recognized in the financial statements. A provision is recognized when a claim is effectively received.

As of April 1, 2018, the Minister of Transport has the statutory power to impose a levy of $1.72 (2017: $1.69) per metric tonne of crude oil carried by a federally regulated railway in Canada. The levy is indexed annually based on the Inflation and Consumer Price Index.

7. BUDGET

The Fund for Railway Accidents involving Designated Goods does not prepare an annual budget due to the nature of its operations.